



Federal Communications Commission  
Washington, D.C. 20554

May 21, 2009

DA 09-1121

Gunnar W. Halley  
Lawler, Metzger, Milkman & Keeney, LLC  
2001 K Street NW, Suite 802  
Washington, DC 20006

Re: Request for Extension of Time to Construct Seven Phase II 220 MHz Licenses

Dear Mr. Halley:

This letter addresses the above-captioned Request for Extension of Time to Construct (Extension Request), filed on behalf of Access 220, LLC (Access 220) on March 2, 2009, seeking waiver of the construction requirements of section 90.767(a) of the Commission's rules<sup>1</sup> for seven Phase II 220 MHz licenses.<sup>2</sup> Specifically, Access 220 MHz requests a 90-day extension of time until June 20, 2009 to satisfy its 10-year construction requirements for the seven licenses subject to the Extension Request. For the reasons stated below, we grant the Extension Request.

Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, Access 220's licenses will terminate automatically as of the construction deadline if Access 220 fails to meet the requirements of section 90.767(a),<sup>3</sup> unless the Commission grants an extension or waives the construction requirements.<sup>4</sup> The construction deadline for the seven licenses was March 22, 2009.

Access 220 states that it assigned certain 220 MHz licenses to PTC-220, LLC<sup>5</sup> as well as certain assets used to provide service in conjunction with the licenses.<sup>6</sup> Furthermore, Access 220 states that some of the facilities used to provide service on the spectrum that was assigned to PTC-220, LLC were also used to provide service on other spectrum associated with the seven licenses subject to its Extension Request.<sup>7</sup> As a result, Access 220 states that it must replace facilities in order to meet its 10-year construction requirements for the seven licenses,<sup>8</sup> and that it has already commenced the facility

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<sup>1</sup> 47 C.F.R. § 90.767.

<sup>2</sup> Request for Extension of Time to Construct (filed March 2, 2009) ("Extension Request). See File Nos. 0003757008 (WPOI695); 0003757009 (WPOI696); 00037557010 (WPOI709); 0003757011 (WPOI710); 0003757012 (WPOI861); 0003757013 (WPOI862); and 0003757026 (WPOI707).

<sup>3</sup> Pursuant to section 90.767(a) of the Commission's rules, an economic area or regional licensee must construct a sufficient number of base stations (i.e., base stations for land mobile and/or paging operations) to provide coverage to at least one-third of the population of its REAG within five years of the issuance of its initial license and at least two-thirds of the population of its REAG within ten years of the issuance of its initial license. Licensees may, in the alternative, provide substantial service to their licensed areas at the appropriate five- and ten-year benchmarks. See 47 C.F.R. § 90.767(a).

<sup>4</sup> 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

<sup>5</sup> We note that PTC-220 LLC is comprised of some of the largest Class I railroad carriers and has sought a five year extension of its 220 MHz construction deadlines to implement "positive train control" technology on a wide-area basis pursuant to Congress' enactment of the Rail Safety Improvement Act of 2008. See Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104, 122 Stat. 4848 (2008); see also Wireless Telecommunications Bureau Seeks Comment on Request by PTC-220, LLC for Waiver and Extension of Time to Construct and a Request for Other Rule Waivers Regarding Part 90 220 MHz Licenses, *Public Notice*, 23 FCC Rcd 18331 (WTB 2008).

<sup>6</sup> Extension Request at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

replacement process by identifying new tower sites, conducting spectrum propagation projections and beginning the process of installing transmission equipment.<sup>9</sup> Access 220 also argues that its limited Extension Request would serve the public interest because the extension requested is for a short period of time and existing customers could continue to operate without unnecessary disruption.<sup>10</sup> For example, Access notes that it currently provides service to the City of Shasta Lake, California as well as two critical infrastructure utilities in the northeast U.S. In addition, Access argues that, as a condition of its agreement with PTC-220, the City of Anaheim, CA is moving its operations from PTC-220's licenses to Access 220's licenses, and therefore a brief extension would enable it to provide service to governmental entities.<sup>11</sup> Finally, Access 220 submits that it has made significant progress towards meeting the 10-year construction requirements.<sup>12</sup>

A waiver may be granted, pursuant to section 1.925 of the Commission's rules, if the petitioner establishes that: 1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>13</sup>

Based on the totality of the circumstances in this case, we believe that the public interest would be served by briefly extending the construction deadline for the seven licenses for 90-days until June 20, 2009. We believe that such a brief extension is warranted. Access 220 has justified a short extension in this instance given its diligence towards meeting its construction requirements, including identifying tower sites, conducting propagation studies and beginning the process of installing transmission equipment and that the underlying purpose of the rule would not be served or would be frustrated by application to the instant case.

Accordingly, IT IS ORDERED that, pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 303(r) and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Request by Access 220, LLC for Extension of Time to Construct IS HEREBY GRANTED, and the construction deadlines for the licenses listed in footnote 2 above shall be extended until June 20, 2009.<sup>14</sup>

Sincerely,

Thomas P. Derenge  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. § 1.925. The Commission has stated that, in situations in which the circumstances are unique and the public interest would be served, it would consider waiving construction requirements on a case-by-case basis. See Amendment of the Commission's Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 5019 (1994) (*PCS MO&O*), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>14</sup> 47 U.S.C. § 154(i), 47 C.F.R. §§ 0.331, 1.925.